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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Los Angeles Times Communications, et al, Petitioners,	)	Case No. BS138331
v.	)	[Tentative] **Order Denying Respondent's Motion for a Protective Order**
Los Angeles Memorial Coliseum Commission, Respondent.	)	

Background

By a verified petition filed on July 18, 2012, Petitioners Los Angeles Times Communications LLC and Californians Aware sued Respondent Los Angeles Memorial Coliseum Commission for violations of the California Public Records Act ("CPRA"), Gov. Code, § 6250 et seq., and the Ralph M. Brown Act ("Brown Act"), Gov. Code, § 54950.5 et seq. In its answer to the verified petition, Respondent stated that "it is a joint powers authority, pursuant to a joint powers agreement between the City of Los Angles, County of Los Angeles, and the Sixth District Agricultural Association, an institution of the State of California, and known as the California Science Center." (Respondent's Answer to Petition, ¶ 4). Respondent manages, operates, and maintains the Los Angeles Memorial Coliseum. (Id.). Respondent does not dispute that it is subject to the CPRA and the Brown Act. (Id.).

The CPRA was enacted in 1968 and is modeled after the federal Freedom of Information Act (FOIA) (5 U.S.C. § 552 et seq.). See County of Los Angeles v. Superior Court (Axelrad), (2000) 82 Cal. App. 4th 819, 825. The CPRA was enacted "for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies." Filarsky v. Superior Court, (2002) 28 Cal.4th 419, 425. In enacting the CPRA, the Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Section 6250.

The Brown Act serves the same democratic purposes as the CPRA: "The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." Government Code § 54950. The Brown Act was enacted to ensure openness in decision making by public agencies and to facilitate public participation in the decision making process. Fischer v. Los Angeles Unified School Dist., (1999) 70 Cal.App.4th 87, 95.

Respondent moves for a protective order preventing reporters from Petitioner LA Times from publishing, publicly discussing or otherwise publicly disseminating any information, testimony

or documents that have been discussed or will be discussed and/or produced during the depositions of John Sandbrook (Respondent's General Manager) and/or the person most knowledgeable for Respondent, unless and until such information, testimony or documents are introduced in evidence at trial.

After reading and considering the parties' briefs, the Court renders the following decision and order:

Evidentiary Objections

The Court sustains Petitioners' evidentiary objections 1-4, 6-8, and 10, to the Fox Declaration. The Court sustains Petitioner's evidentiary objections 1-2 to the Sandbrook Declaration. The remaining objections are overruled.

The Court overrules Respondent's evidentiary objections to the Glasser Declaration.

Summary of Applicable Law

The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code of Civil Procedure section 2017.020(a). The court may make this determination pursuant to a motion for protective order by a party or other affected person. Id.

Code of Civil Procedure section 2025.420 provides in pertinent part:

> (a) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040.
>
> (b) The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

Moving parties have the burden to show good cause for a protective order. Emerson Elec. Co. v Sup. Ct., (1997) 16 Cal.4th 1101, 1110. The decision upon whether to enter a protective order lies within the sound discretion of the court. Raymond Handling Concepts Corp. v. Sup. Ct., (1995) 39 Cal.App.4th 584, 588, 591.

"The court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Code of Civil Procedure section 2025.420(d).

Analysis

Respondent argues that a protective order is necessary to ensure that Petitioners do not abuse the discovery process and that Petitioners will not be harmed by a protective order. In support of its position, Respondent relies heavily on Seattle Times Co. v. Rhinehart, (1984) 467 U.S. 20. Specifically, Respondent contends that Seattle Times holds that there is no First Amendment right to disseminate information gained through discovery in advance of trial. Respondent also contends that the requested protective order is limited in scope, the case does not involve matters of significant public interest, and Petitioner LA Times' reporters are likely to use the deposition process to cause Sandbrook unwarranted annoyance, harassment, embarrassment, and/or oppression. In turn, Petitioners argue that a protective order would be an unconstitutional prior restraint and that Respondent has failed to establish good cause for the protective order.

In general, a protective order impairs the public's access to discovery records as well as the parties' right to disseminate information to the public. For this reason, courts frequently consider the public interest when determining whether good cause exists for a protective order. The courts have two substantial interests in regulating pretrial discovery: one is to facilitate the search for truth and promote justice; the other is to protect the legitimate privacy interests of the litigants and third parties. See Seattle Times Co. v. Rhinehart, (1984) 467 U.S. 20, 34.

With these principles in mind, the Court finds that Respondent has not shown good cause for the requested protective order.

First, California law does not contemplate that matters raised in a deposition are presumptively private or subject to nondisclosure. Indeed, Code of Civil Procedure § 2025.570 provides that a copy of the deposition testimony shall be made available to any person requesting a copy on payment of a reasonable charge set by the deposition officer. See also Board of Trustees of California State University v. Superior Court, (2005) 132 Cal. App. 4th 889, 901 ("Thus, depositions are ordinarily not documents that the parties would reasonably envision would not be made available to persons or entities outside the litigation."). The Legislature's provision for a statutory mechanism for any member of the public to discover the content of a deposition weighs against a finding of good cause to preclude the disclosure of the deposition testimony and information in the instant case. This is especially true given that this lawsuit is brought for purported violations of the CPRA and the Brown Act, and Respondent does not dispute that it is subject to both laws.

Second, Respondent has not presented any evidence that confidential, privileged or private matters would be improperly disclosed if the information obtained at the depositions was disseminated to the public. Respondent simply assumes that all information gleaned from the Sandbrook deposition would constitute an unwarranted annoyance, embarrassment, oppression, or undue burden and expense. This assumption is not well taken. The Court can conceive of many relevant questions that would not violate any privilege or intrude upon Sandbrook's privacy. In any event, there is an adequate procedure available by which Respondent may urge privilege, privacy, or irrelevancy: Respondent's counsel can simply raise an objection and instruct Sandbrook not to answer.

Third. even the requested revised protective order is overbroad because it would prohibit any LA Times news reporter from even talking about "any information" discussed or obtained in the depositions regardless of the content.

Fourth, Respondent's reliance on Seattle Times Co. v. Rhinehart is misplaced. Seattle Times involved a defamation and invasion of privacy suit brought by a private individual, the spiritual leader of a religious group, and his foundation. There, the state court found, and the federal court affirmed, good cause to issue a protective order to prevent the disclosure of the identities of the foundation's donors based on their right to privacy, freedom of religion, and freedom of association. These grounds are not implicated in the pending depositions—certainly, Respondent has not presented any evidence that they are implicated.

Finally, this case involves matters of significant public interest. The depositions at issue relate to alleged violations of the CPRA and the Brown Act concerning the management of the Los Angeles Memorial Coliseum, an important landmark with cultural and historic significance.

Disposition

The motion is denied. Sanctions are not imposed because Respondent acted with substantial justification in bringing the motion.

IT IS SO ORDERED

May 9, 2013

Hon. Luis A. Lavin
Judge of the Superior Court